

**IN THE COURT OF THE SUBORDINATE JUDGE,
KOTTARAKKARA**

Present:- Sri. Shanavas. A, Civil Judge(Senior Division)

**On Thursday, the 5th day of December, 2024/
14th day of Agrahayana, 1946.**

IA.No: 7/2024

in

OS No.259/2011

Between

Petitioners/Plaintiffs:-

- 1). P.B Pushparajan, aged 62 years, Pushpamangalam, Bharanikavu, Punalur Village, Pathanapuram Taluk.
- 2) P.B.Sivarajan, Pushpamangalam, Bharanikavu, Punalur Village, Pathanapuram Taluk.
- 3) P.B.Suresh Babu, aged 67 years, TC/1221, Lekshmi, Kuklialane, Jagathi Thiruvananthapuram.
- 4) P.B.Chandrakumar (**Died**)

By Adv. Sri. G. Raghukumaran Nair- 1 to 3.

And

Counter Petitioners/Defendants:-

- 1). P.B Chandra Babu, aged 56 years, N.R. Cottage, Perayathumukal , Pirappancode, Thiruvananthapuram.
- 2) P.B.Padma, aged 44 years, Sri Tilak, Kesari Nagar, Poojappura, Thiruvananthapuram.

- 3) P.B.Venu, aged 59 years,
Pushpamangalam, Bharanicavu ,
Punalur Village, Pathanapuram Taluk.
- 4) P.B.Jeevakumar, aged 46 years,
Pushpamangalam, Bharanicavu ,
Punalur Village, Pathanapuram Taluk.

Addl.5. Baby Rani, aged 51 years, Avana Bakery,
Opposite to Muncipal Office, Punalur.

Addl 6. Alli Rani, aged 30 years, Avana Bakery,
Opposite to Muncipal Office, Punalur.

Addl 7. Maithry Rani, aged 26 years,
Avana Bakery, Opposite to Muncipal Office,
Punalur.

By Adv: Sri. Jayakumar S.- D1.

C.P. Sarath Chandran Nair- D1.

B. Vijayan- D2 and D4.

G. Anitha and P.N. Gopinathan Nair- D3

This petition was filed under Section 151 of Civil Procedure Code, 1908. The petition was called on for hearing on 05/12/2024 and the court on the same day passed the following:-

ORDER

This is an order in a petition filed under Section 151 of the Civil Procedure Code, 1908 for making the mobile phone produced before the court, in working condition, with the assistance of an expert and to play the recorded voice before the officer of the court.

2. **Petitioner's case in brief is as follow:-** Petitioner is the 3rd plaintiff in the suit. The suit was filed for declaration to the effect that the family settlement relied, sanctioned and acted upon by all prevails and the 1st and 2nd defendants are liable to act as per family settlement thereby executing exchange deeds. The petitioner had relied the mobile phone containing the conversation of the petitioner and respondent No. 1, who is the first defendant with regard to the transfer of properties as per family settlement. The petition has been filed by the petitioner to send the mobile phone containing voice for examination in the State Forensic Science Laboratory, Thiruvananthapuram. But the State Forensic Science Laboratory returned the mobile phone with a report that on examination of mobile phone could not be powered ON, using the facilities available in the laboratory. On that account, it is very essential for making the mobile phone working condition and playing the recorded voice contained in the mobile phone and for copying the record to a CD in the presence of the Officer of the court for just disposal of the case. Thus, the petition.

3. **The respondent No. 1 filed objection contenting interalia as follows:-** The mobile phone had already been made subject to power on or opening so as to verifying the voice sample. The Forensic Science Laboratory, Thiruvananthapuram had already applied its scientific method to verify the impugned voice data contained in the mobile phone. Respondent No.3 earlier filed IA 709/2017 in OS 227/2011 seeking for same relief after verifying the alleged voice between two defendants. IA 543/2018 in this case was filed the petitioner for the same reason in collusion with other plaintiffs and defendant No 2 and 3 and as per the order of this court, the mobile phone was sent to Forensic Science Laboratory, Thiruvananthapuram for comparison and it was not opened

by them. Submitting the mobile phone on second time will lost its probative value relevancy and integrity. The respondent no.1 interalia sought to dismiss the petition.

4. **Respondent No. 2 and 4 also filed objection contenting as follows:-** The petition is filed without any bona fide. There is no need or necessity in technical expert for opening the mobile phone before the court. On the above reasons the respondents 2 and 4 also sought to dismiss the petition.

5. Heard both sides.

6. The following points arise for consideration:-

1. Whether the petitioner is entitled for an order to switch on the mobile phone and play the record voice in the presence of the officer of the court by appointing technical expert as sought for?
2. What shall be order as to costs?

7. **Point No. 1:-** As per the order of this court in IA 543/2018, this court sent the mobile phone in question to the State Forensic Science Laboratory, Thiruvananthapuram , as there was no facility to open the mobile phone that in the State Forensic Science Laboratory, it was returned. The present petition is in continuation of the order passed by this court, seeking for making mobile phone in working condition and playing the record voice contained in the mobile phone. The objection raised by the respondents goes to show that they are concerned with the evidentiary value of the impugned voice. As there are two other

connected cases between the parties, the alleged recorded voice in the mobile phone may be a vital part of evidence for the adjudication of all the three suits as per law. One of the reliefs sought in the suit is to act as per family settlement agreed by them. Considering the arguments on either side and perusal of relevant records, I find that impugned conversation allegedly between the petitioner and respondent No.1 has relevancy and can be helpful for the just disposal of the suit, if the mobile phone switch on and the voice compared with the voice of petitioner and respondent no.1. The objection raised by the respondents especially the relevancy and admissibility of the voice can only be considered at the time of trial. If this court is inclined to dismiss the petition it will amount to shutting down the evidence of the petitioner. It is the duty of the court to render the justice to the parties once the party approach the court for redressal of his grievance. Without much pondering, I am of the view that the evidence of the petitioner cannot be shutting down by the court. Therefore, I am inclined allow the petition in part. Hence point No. 1 is partly found in favour of the petitioner.

8. **Point No. 2 :-** In view of my discussions and findings of point No. 1, the petition is liable to be allowed in part.

In the result, the petition is allowed in part. The petitioner is permitted to make the mobile phone working condition with the help of a Government Technical expert without damaging its contents. The Government Technical expert shall return the mobile phone with a certificate stating that the content of the mobile phone is not damaged. Both parties are at liberty to file the panel of Government Technical Experts in making mobile phone in working condition. The expense of

appointing Government Technical expert shall be borne by the petitioner.
No order as to costs.

Dictated to the confidential assistant, typewritten by her, corrected and pronounced in open court on this 5th day of December 2024.

Sd/-
Shanavas. A,
Civil Judge (Senior Division)

APPENDIX :- Nil

Sd/-
Civil Judge(Senior Division).

Typed by :Binu.S
Comp.by : Sheela.M.S